

**State Board of Forestry and Fire Protection**

**Findings Pursuant to Government Code Section 11346.1(b) in Support of  
Adoption of Emergency Rules to Implement Fuel Hazard Reduction  
Regulatory Relief**

**Notice Date: June 16, 2004**

The California State Board of Forestry and Fire Protection (Board) is promulgating an emergency regulation necessary to provide regulatory relief for an emergency condition relating to wildlife threat and hazardous fuel conditions in the State's private timberlands, in accordance with existing statute PRC 4592, Emergency notice; content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments and environmental protection measures related to the removal of live and dead fuel (vegetation) hazards near communities, roads and infrastructure facilities. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.4, Emergency Notice for Fuel Hazard Reduction. This action is being taken in accordance with Government Code 11346.1 and 11349.6 of the Administrative Procedures Act.

Comments on this emergency regulation may be provided by mail, courier, or fax and should be addressed to

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Tel: (916) 653-9418

and

Office of Administrative Law  
300 Capital Mall Suite 1250  
Sacramento, CA 95814  
Fax: (916) 323-6826  
Tel: (916) 323-6225

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be sent via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

**Comments must be received by 5:00 PM, June 25, 2004.** It is requested, but not required, that written statements or arguments be submitted in triplicate.

## **I. Finding of Emergency**

**State Board of Forestry and Fire Protection (Board) recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation.** This wildfire hazard is a significant threat to human and natural resources on over 48 million of the State's 81 million acres of forests and rangelands. The imminent emergency nature of the fuel hazard problem has also been repeatedly recognized by many high profile efforts including the Governor's Blue Ribbon Fire Commission of 2004, General Accounting Office report on western National Forest fire conditions, the Western Governors' Association promulgation of the National Fire Plan, the USDA Forest Service (USFS) Sierra Nevada Forest Plan Amendment, 2004, and legislation proposed by the California State Assembly.

**The Board finds modern fire frequency is much longer in most areas than prior to European settlement, with much of California's wildlands able to support intense catastrophic wildfires.** Past disruptions of natural fire cycles and other activities have resulted in wildfires of increasing intensity and severity that are a threat to the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California. Much of the forests and rangelands have fuel and slope conditions that would support high or very high fire behavior when burned under severe weather conditions. Fires that burn in these areas under hot, dry, and windy conditions are difficult to control even by the world's most comprehensive wildland fire protection system.

**The Board finds fire hazard, the combination of terrain, fuel type and fuel condition, is steadily becoming more hazardous on timberlands.** Healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build up of flammable fuels. Recent measurements by the USFS Forest Inventory and Analysis Program (FIA) indicate increasing level of stocking on private lands over the last three decades with million of acres of coniferous forest types having stand densities far beyond stocking levels associated with the site capacity. This suggests

that stands are very susceptible to significant levels of pest mortality and increased dead fuel loads. When combined with on-going drought and atmospheric zone damage, these conditions can lead to catastrophic wildfire events. The treatment of these hazardous fuels reduces the impact of wildfires on communities and natural and cultural resources, and restores health to fire-adapted ecosystems.

**The Board finds there is an emergency situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare.** The emergency situation is found in the following:

- **The values at stake in wildland fire protection are extensive and at imminent threat.** The Board finds that over 5.4 million acres of all vegetation types in the wildland urban interface have significant fire threat with over 4.9 million housing units are exposed to High, Very High or Extreme Fire Threat as defined by the California Department of Forest and Fire Protection's Fire and Resource Assessment Program. Natural resources are also at risk. Nearly 17 million acres of diverse ecosystems ranging from pine forests in the Klamath/North Coast region to coastal sage scrub communities along the South Coast have high fire threat, where substantial damage to ecological values such as habitat, water quality and quantity, and carbon sequestration could occur following fires.
- **There is a reasonable likelihood that the risk of wildfire is above normal for 2004 for both northern and southern California.** Meteorological events and fuel conditions have combined to create a substantial and earlier fire threat in California in 2004.
- **The combination of fuel, weather and valuable human and natural resource assets have created in increasing amount of wildfire and increasing losses.** Major wildland fires in California, epitomized by the extraordinary fires of October, 2003, threaten a wide range of public and private assets. In 2003, wildfires destroyed more than 730,000 acres and 3,600 residential structures, and resulted in the tragic loss of 25 lives in California. The southern California wildfires were followed by mudslides that tragically killed 14 people. The subsequent mudslides possibly resulted from vegetation lost to wildfire and flash flooding.

Recent five year average shows over 500,000 acres were burned, and as seen recently in 2003, this annual total varies greatly with over 700 thousand acres burned in some years. While the area burned in wildfires varies greatly year to year, when viewed statewide, there has been an apparent increase in high fire years (total area burned greater than 500,000 acres) since 1985.

While the acreage and number of wildfires each is extensive and increasing on a statewide basis, a more significant trend is the climbing wildfire-related financial losses. From 1947 to 1990, the dollar damages to structures and other resources

in State Responsibility Areas (SRA) exceeded \$100 million (2001 dollars) only once. Between 1990 and 2001, losses exceeded \$100 million five times.

**Given these situations, the Board declares an emergency condition is found relating to wildlife threat and hazardous fuel conditions in the state's private timberlands, in accordance with existing statute PRC 4592, Emergency notice; content.** To address this condition, action is needed for cutting and removal hazardous fuels, including trees, shrubs and other woody material to eliminate the vertical and horizontal continuity of tree crowns, ladder fuels and surface fuels, for the purpose of reducing the rate of fire spread, fire duration and intensity, and fuel ignitability. This action is necessary to better coordinate with federal planning and opportunities, and to expedite projects to increase safety for the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California, by reducing fire threats where ecosystem and public safety risks are excessive.

**The Board finds that regulatory amendments, within the scope of existing legislation and the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), are necessary to provide regulatory relief for expedited fuel hazard reduction of live and dead fuels.**

**The Board finds that allowing filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.**

**The Board finds the general scope of fuel treatment for hazard reduction is of greatest priority on private timberlands with significant fire threats primarily within the "Wildland Urban Interface".** This scope focuses on locations in the forested landscape where human assets and wildland conditions are found. Within this area, the primary target groups are small timberland owners, who often have the least means and capability to complete fuel reduction projects nearest to rural communities.

**The Board finds that proposed regulations which treat surface, ladder and, to a lesser extent crowns of trees, are necessary to reduce fire hazard.** Such treatments include reducing tree crowns to no less than 40-60 percent crown closure, increasing height to live crown base distance to greater than eight feet, reduction of surface fuel to meet a four foot flame length fire behavior objective, and limited removal of trees less than 30 inches stump diameter with prioritization on removal of smaller trees necessary to meet fuel hazard reduction goals.

**The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen significant effects on the environment where feasible.** Such mitigation measures include avoiding removal of larger trees; prohibiting operations in watercourses; no operation on steep slopes; no new road construction; watershed protection measures specifically designed for the unique water quality issues in the Lake Tahoe Basin; incorporating protection requirements of species that may be impacted including retention of special habitat elements (snags and down large woody debris) to maintain and enhance wildlife values, screening and cover to provide shelter

and migration corridors; review and disclosure of threatened, endangered or sensitive species, and no operation in areas with a Board defined sensitive species; and additional time for cultural review.

**The Board finds the remaining unavoidable impacts, if any, are acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the significant and adverse impacts.** With implementation of these mitigations, effects will be substantially lessened or eliminated. However, all impacts may not be avoided, particularly related to impacts on wildlife habitat and visual screening. If any impacts remain they are likely minor, and more than overridden by the catastrophic losses resulting from wildfire to life, property, human health, and natural resources considered in the Board's Emergency Condition Declaration in accordance with PRC 4592, adopted June 9, 2004.

**The Board finds the regulatory action related to this declaration shall be implemented as an Emergency Regulation in accordance with the GC 11346.1 of the California Rulemaking Law of the Administrative Procedure Act.** Such emergency rule making is necessitated by the findings described in this declaration. In accordance with the code, such regulation would be in effect for 120 days. During this time frame, it is the intention of the Board to evaluate permanent regulations that address the emergency condition.

**The Board finds that post harvest review of operations conducted under this emergency regulation is needed to ensure objectives and goals of the regulation are achieved.** Considerable deliberation was given to various alternative fuel hazard reduction methods. In light of the varying possibilities for fuel hazard reduction, the Board has determined that post harvest review of completed projects, using a interdisciplinary evaluation team, is needed evaluate the achievement of intended regulation design in terms of reduction of fuel hazard, protection of environmental values, administrative compliance effectiveness, and economic effectiveness to landowners using the regulation.

## **II. Authority and Reference**

Public Resources Code (PRC) 4551 authorizes the Board to adopt rules and regulation as it determines are reasonably necessary to enable, implement, interpret or make specific PRC 4592.

## **III. Informative Digest/policy statement**

The Board recognizes the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity and arrangement of natural vegetation. To address this situation, the Board is proposing to amend existing regulation and adopt new regulations within the scope of existing legislation and the Forest Practice Rules Title 14 CCR, Chapters 4, 4.5 and 10, sections

§§ 895, 1052, 1052.1 and 1052.4. The proposed rule would be adopted on an emergency basis as provided for in Government Code §11346.1.

The proposed rule would provide regulatory relief for expedited fuel hazard reduction of live and dead fuels. The rule defines a new Emergency Condition under section 14 CCR §1052.1 (e) and allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.4, Emergency Notice for Fuel Hazard Reduction.

The general scope of the rule is private timberlands in and ¼ mile adjacent to “communities at risk”, as listed by the California Fire Alliance. Additionally, 500 feet from certain roads, permitted structures outside of the community areas, infrastructure facilities, and approved fire suppression ridges are included for treatment. The primary target groups are small timberland owners, who often have the least means and capability to complete fuel reduction projects.

The general goal is reduction of the vertical and horizontal continuity of fuels by using vegetative manipulation methods that modify surface fuels, remove ladder fuels, and (to a lesser extent) thin the overstory canopy.

#### **IV. Specific purpose and Statement of Necessity**

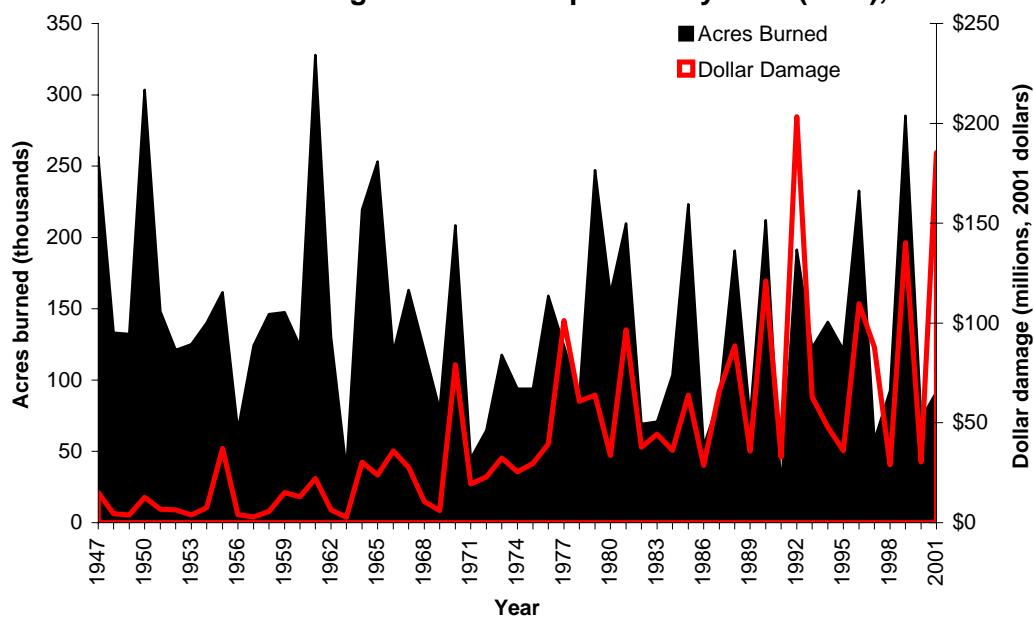
In recent years, the public has become deeply concern about the potential for severe forest wildfire. Of particular concern are the wildfires in the Wildland Urban Interface areas where homes and development intermix with the wildland vegetation (Carey and Shumman, 2003). Conversely, forest managers are concerned about the spread of fire from these residential areas into wildland areas and the impacts they have on natural resources and ecological system such as habitats, water cycling and carbon sequestration. While modern fire frequency is much lower in most areas than prior to European settlement, much of California's wildlands support conditions of high or very high potential fire behavior if fires are not aggressively suppressed. Much of the forests and rangelands have fuel and slope conditions that would support high or very high fire behavior when burned under typical severe weather conditions. Fires that burn in these areas under hot, dry, and windy conditions are difficult to control even by the world's most comprehensive wildland fire protection system.

The combination of fuel, weather and valuable human and natural resource assets have created in increasing amount of wildfire and increasing losses. Major wildland fires in California, epitomized by the extraordinary fires of October 2003, threaten a wide range of public and private assets, including not only watershed values, such as water quality, habitat, water supply and power generation, but also life and property, wildlife habitat, air quality and important infrastructure. Each year on average over 250,000 acres of forest and rangeland of all ownership is affected by wildfire. Recent five year average shows over 500,000 acres were burned, and as seen recently in 2003, this annual total varies greatly with over 1 million acres were burned. Area burned in wildfires varies greatly

year to year, with climate driving much of the variability. When viewed statewide, the temporal variation masks any possible trends in total acreage, although there has been an apparent increase in high fire years (total area burned greater than 500,000 acres) since 1985.

While the acreage and number of wildfires each is extensive and increasing, (approximately 10,000 wildfires burn half a million acres on an annual basis in California), the number of acres burned fluctuates considerably. A more significant trend is the climbing wildfire-related financial losses. From 1947 to 1990, the dollar damages to structures and other resources in State Responsibility Areas (SRA) exceeded \$100 million only once. Between 1990 and 2001, losses exceeded \$100 million five times (see figure).

#### Wildfire acres and dollar damage on State Responsibility Area (SRA), 1947-2001



The specific purpose of the proposed rule is to address the hazardous wildfire situation on private timberlands by providing regulatory relief for expedited fuel hazard reduction of live and dead fuels. This relief is created allowing the filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of §1052.4, Emergency Notice for Fuel Hazard Reduction.

Section §1052.1(e) defines a new Emergency Condition. An Emergency condition must be defined, in accordance to PRC 4592, prior to allowing operations to be permitted using an Emergency Notice.

Section §1052.4 is the needed to the requirements under which the Emergency action will take place. Subsection §1052.4(a) require the RPF filing the notice to document the emergency conditions and the vegetative treatments needed to reduce the fuel hazard condition,

Subsection §1052.4(b) identifies the general environmental requirements and restrictions applicable to the proposed rule. Subsection § 1052 (10) and (d) also describe environmental protection requirements specifically related to archaeological values.

Section §1052.4(c) identifies the geographic area where the fuel hazard reduction is permitted.

Subsection §1052.4(c) identifies the vegetative treatments permitted by the proposed rule.

Sections §895.1 provide new definitions to to facilitate applicable post harvest future behavior performance goals and specify locations where the proposed vegetative treatments can take place.

## **V. Disclosures Regarding the Proposed Action**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC §17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed



regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.

- The proposed rules do not conflict with, or duplicate Federal regulations.